

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-275-S

Application of Condor Environmental, Inc., Requesting an Expansion of its Existing Sewer Service Area to Include Certain Portions of Anderson County and Saluda County and Approval of Agreement.

**CONDOR ENVIRONMENTAL, INC.'S
REPLY AND MOTION TO STRIKE
SCWSA'S RESPONSE TO MOTION TO
RECONSIDER AND REPLY TO
CONDOR'S OBJECTION TO
INTERVENTION
AND MOTION TO STAY DEADLINES
FOR PLEADING AND DISCOVERY
(Expedited Consideration Requested)**

Condor Environmental, Inc. responds to and moves to strike the Saluda County Water and Sewer Authority's Response to Motion for Reconsideration and Reply to Condor's Objection to SCWSA's Petition to Intervene filed December 18, 2020.

The Commission should strike SCWSA's response to Condor's motion to reconsider because the underlying issue has been decided and because it does not pertain to the subject of Condor's motion to reconsider. Condor moved to reconsider Order No. 2020-128-H because the order was based on the erroneous premise that SCWSA's petition to intervene was unopposed. The Chief Hearing Officer vacated his ruling on the same day upon learning of Condor's opposition to SCWSA's intervention. In Order No. 2020-130-H, the Chief Hearing Officer referred the matter to the Commission for review disposition at a later date. Therefore, Condor's motion to reconsider was already decided when SCWSA filed its response on December 18, 2020.

The substance of SCWSA's response also has nothing to do with Condor's motion to reconsider. Instead SCWSA reprised its claim to the exclusive right to serve Saluda County. In doing so, SCWSA raised novel arguments regarding DHEC Permitting, the Section 208 plan, and

its loans from the United States Department of Agriculture are not appropriate in a reply, because they were not raised in SCWSA's petition to intervene.

Reply briefs at the Commission serve the same purpose as in the courts. The U.S. District of South Carolina's local rules state the purpose of a reply:

Replies. Replies to responses are discouraged. However, a party desiring to **reply to matters raised initially in a response to a motion** or in accompanying supporting documents shall file the reply within seven (7) days after service of the response, unless otherwise ordered by the court.

Local Civ. Rule 7.07 (D.S.C.) (*emphasis added*)

The District Court of South Carolina has held "It is improper to consider arguments raised for the first time in a reply brief." *Bartlett v. S.C. Dep't of Corr.*, Civil Action No. 2:17-03031-RMG-MGB, 2020 U.S. Dist. LEXIS 38803, at *86-87 (D.S.C. Feb. 5, 2020). Similarly, In appellate proceedings, arguments or issues may not be raised for the first time reply briefs. *McClurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 (2011) ("it is axiomatic that an issue cannot be raised for the first time in a reply brief.") "SCWSA should not be allowed to make new arguments for exclusivity in its reply brief.

On December 16, 2020, the Commission appointed F. David Butler as the hearing officer in this docket to develop a discovery and procedural schedule with the parties. Condor moves the Chief Hearing Officer to stay further deadlines for pleading and discovery until the conference is held, and an appropriate schedule can be ordered (at a minimum, all parties should welcome a Christmas cease-fire).

In the interest of judicial economy, Condor requests expedited consideration of its motion to stay.

Therefore, Condor moves the Commission grant the following relief:

1. Strike SCWSA's response and reply of December 18, 2020
2. Stay all deadlines for discovery and pleading until an appropriate schedule is ordered for this docket.

Respectfully submitted,

s/ Charlie Terreni

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